



Australian Government



Guidelines for amendments to water resource plans – Part 1

January 2021

Published by the Murray–Darling Basin Authority
MDBA publication no: 02/21
ISBN (online): 978-1-922396-34-1



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Acknowledgement of the Traditional Owners of the Murray–Darling Basin

The Murray–Darling Basin Authority pays respect to the Traditional Owners and their Nations of the Murray–Darling Basin. We acknowledge their deep cultural, social, environmental, spiritual and economic connection to their lands and waters.

The guidance and support received from the Murray Lower Darling Rivers Indigenous Nations, the Northern Basin Aboriginal Nations and our many Traditional Owner friends and colleagues is very much valued and appreciated.

Aboriginal people should be aware that this publication may contain images, names or quotations of deceased persons.

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Key points

- The making of an amendment to an accredited Water Resource plan is a process which is governed by sections 65 and 66 of the *Water Act 2007* (Cth) (The Water Act).
- The process of drafting an amendment should be a collaborative process between Basin states and the MDBA.
- Changes to state legislation that is part of a Water Resource Plan can lead to an amendment of an accredited Water Resource Plan.
- In providing an amendment to an accredited Water Resource Plan it is important to be very clear about the changes being made, for example by applying ‘track changes’ or providing a list of changes.
- The whole Water Resource Plan, as amended, must be consistent with the Basin Plan in force at the time when the MDBA and Minister make their recommendation and accreditation decisions.
- The MDBA will apply an assessment process tailored to match the scale and complexity of the amendment when assessing compliance with the Basin Plan requirements.

Introduction

Water management is an evolving process and changes to Water Resource Plans (WRPs) are anticipated as new and improved information comes to hand. The Water Act sets out the process for accrediting amendments of WRPs.

Amendments fall into two categories:

- Minor or non-substantive amendments (section 66 of the Water Act) an amendment to an accredited WRP of a kind that is prescribed in regulation 2.11A.
- Amendments (section 65 of the Water Act) – amendments that are given by a Basin state to the Authority, who then advise the Commonwealth Minister responsible for water on whether the amendments should be accredited.

These guidelines provide information on Basin states' submissions of WRP amendments under s 65 of the Water Act and the MDBA's process for considering any proposed changes to accredited WRPs. [Part 2 of the Guidelines](#) provide further guidance relating to minor or non-substantive amendments for the purposes of section 66 of the Water Act.

Circumstances leading to an amendment

Section 65 of the Water Act provides for amendments of accredited WRPs. A Basin state may:

- Give the MDBA a proposed amendment and ask that it be given to the Minister for accreditation at any time;
- Propose an amendment to an accredited WRP in any of the following circumstances:
 - when state legislation incorporated into the WRP changes;
 - to incorporate improved knowledge or include improvements in modelling and methods used for estimating and measuring water take;
 - to accommodate and reflect changes to the Basin Plan; or
 - when a review of the WRP recommends that an amendment be made.

Section 68 of the Water Act provides that the Minister may also ask the MDBA to prepare a WRP to incorporate an amendment of an accredited WRP if:

- a review of the WRP is undertaken (under a state water management law or the WRP itself); and
- the report of the review recommends that the WRP be amended; and
- the Basin state does not give the MDBA an amendment within a reasonable time after the recommendation is made.

It should be noted that accreditation of a WRP ceases to have effect three years after an amendment of the Basin Plan that affects WRP accreditations if the WRP was accredited before the amended Basin Plan (refer sections 64(1)(b) and section 48(8) of the Water Act). The three-year period for updating WRPs in this situation may be extended by up to a year.¹

The preparation, assessment and accreditation of WRP amendments under a Section 65 process is expected to follow the three broad stages of assist, assess and accredit set out in **Attachment A**.

¹ However, the accreditation of a WRP would cease before this point in time if the WRP ceased to have effect (section 64(1)(a)).

Preparing a proposed amendment – Assist Phase

Amendments to WRPs should be a streamlined and collaborative process (**Attachment A**).

When considering an amendment Basin states should notify the MDBA as early as possible. This will allow open discussion about the proposed amendment, potential intersections with Basin Plan requirements, and the process to take to get the amendment to the Authority and Minister for consideration.

Early discussion will also allow the MDBA and Basin state to tailor the amendment process to the scale and complexity of the proposed amendment, ensuring that simple amendments are not onerous. In addition, the Authority may assist in the preparation of an amendment (section 67 of the Water Act) and so early discussion will allow for a collaborative management approach to the amendment process to be taken. The contact point to discuss proposed amendments within the MDBA is General Manager of Water Resource Plan, Policy and Assessment Program.

Basin states may undertake consultation including with other state governments, Traditional Owners, water users and other stakeholder groups in relation to a proposed amendment. While the Basin Plan does not dictate consultation processes, if any consultation is undertaken in relation to the WRP including any proposed amendments, a description of that consultation must be included under section 10.07(2) of the Basin Plan.

In providing an amendment to the MDBA it is important to be very clear about the changes being made. To assist this the Basin state, in providing an amendment to the MDBA, should list the changes – either as track changes or through a clear list documenting the edits. The MDBA will confirm the changes with the Basin state.

Table 1: Basin State processes for preparing a proposed WRP amendment

Water Act process	Basin State process
<p>A Basin State may give the Authority a proposed amendment and ask the Authority to give the proposed amendment to the Minister for accreditation</p>	<ul style="list-style-type: none"> • Notify the MDBA as early as possible in the process • Consult in the preparation of an amendment, as applicable. • Provide a letter to the MDBA seeking to amend a WRP that has been accredited under section 63 of the Water Act. • Provide a copy of the accredited WRP clearly setting out the altered or amended sections of the WRP (e.g. track changes). • Set out reason(s) for the proposed amendment if it arises from a review of the WRP (section 10.48 of the Basin Plan). • Provide a list of changes indicating which part of the WRP amendment package satisfies each requirement (Basin Plan s10.04). • Provide any supporting documentation or changes to existing supporting documentation.

Water Resource Plans should be reviewed and updated on a regular basis to ensure consistency between the different levels of legislation. A degree of judgement will be required to determine when updated plans should be formally submitted to the MDBA for amendment. Up-to-date and well aligned state and Commonwealth legislation provides greater certainty to all water users and mitigates the risks of an individual, agency or body acting inconsistently with an accredited WRP. The nature and extent of any differences that arise between state instruments or policies and accredited WRPs will inform consideration of what is a reasonable amount of time to bring forward amendments and should be considered on a case by case basis.

Version of the Basin Plan

The Minister must accredit a proposed amendment of a WRP if ‘the Minister is satisfied that the water resource plan, as amended, would be consistent with the Basin Plan’. The proposed amendment is not considered in isolation. Rather, the Minister is required to consider whether the entire accredited WRP, as amended, would be consistent with the Basin Plan. This will involve the MDBA indicating whether it thinks that the whole WRP, as amended, would be consistent with the Basin Plan.

The amended WRP must be consistent with the relevant Basin Plan. The relevant Basin Plan is the version that the Minister applies at section 56 of the Water Act. That is, the relevant version of the Basin Plan is the Basin Plan that is in effect when the MDBA prepares and makes a recommendation to the Minister about whether a proposed WRP amendment should be accredited.

Similarly, when the Minister makes a decision under section 65(5) of the Water Act to accredit or not to accredit a proposed amendment to an accredited WRP, the Minister is required to have regard to the Basin Plan as in effect at the time the Minister exercises that decision-making power.

When proposing an amendment to an accredited WRP, the proponent will need to ensure that the WRP, as amended, will also be consistent with the whole Basin Plan. This will necessarily include any Basin Plan updates, which relate to WRP requirements, in comparison with the version that the WRP was originally accredited against.

Note on modelling

The MDBA anticipates changes to the modelling component of the annual permitted take method for WRPs. A number of modelling review points are emerging including as a result of the transition to the Source model, review of the Source Murray Model and to align with the Basin-wide model harmonisation process. The model custodian (MDBA and/or States, as relevant) will maintain an ongoing register of model refinements. Where these impact on the WRP permitted take method, the MDBA would anticipate a Basin state to propose a WRP amendment consistent with s 65 of the Water Act. It is expected that this would follow agreement between the MDBA and States to a model update process consistent with Basin Plan requirements.

Note on changes to supporting documentation

Updates to WRP supporting documentation may be permitted after a WRP is submitted for accreditation and/or after it is accredited. Where such changes do not affect the interpretation or operation of the WRP itself, they are not considered as part of the formal amendment process. This applies to documents that are not directly part of the accredited WRP, are considered as supporting material only, and where any changes would be of a non-substantive nature.

A Basin state may withdraw a supporting document that was already submitted as a part of the WRP package and then resubmit that supporting document, as long as it has only changed in a minor way. This type of change should not include anything that affects the substance of the document, the consistency of the WRP with the Basin Plan, nor the operation of the WRP.

If any change means there would be a substantive change to the WRP or its operation or bring into question its consistency with the Basin Plan, an amendment to the WRP in accordance with the Water Act will need to be considered.

Assessment process – Assess Phase

On receipt of the proposed amendment, and to enable transparency, the MDBA will publish the proposed amendment on the website.

The MDBA’s assessment approach will provide for a consistent, transparent and legally defensible consideration of any proposed amendment.

When considering a proposed amendment (section 65(3) of the Water Act), the MDBA will apply a process that can be tailored to match the complexity of the amendment. This tailored approach will take into account the nature of the amendment and how many parts or requirements are impacted. When assessing an amendment, the MDBA will focus on affected Basin Plan provisions.

The amended parts of the WRP, and any linked provisions will be assessed in accordance with MDBA’s published WRP assessment framework, including the relevant assessment tests. This material is published on the MDBA website (<https://www.mdba.gov.au/publications/policies-guidelines/water-resource-plans-tools-basin-state-governments>). The MDBA publishes the completed assessment report following accreditation of a WRP and these previous assessments would guide any future consideration, subject to Basin Plan amendments or new information that may be relevant to the assessment.

The MDBA will identify which Basin Plan chapters are applicable to the proposed amendment. The MDBA will only assess those items directly or indirectly related to the proposed amendment and any items directly or indirectly related to Basin Plan updates in comparison with the version against which the WRP was originally accredited.

For amendments that impact on components of a WRP relevant to Part 14, Chapter 10 of the Basin Plan (Indigenous values and uses) the MDBA will seek the advice of relevant Indigenous organisations (for example, the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) or the Northern Basin Aboriginal Nations (NBAN)) before submitting an accreditation recommendation to the Minister.

Table 2: MDBA processes to support the assessment of a proposed WRP amendment

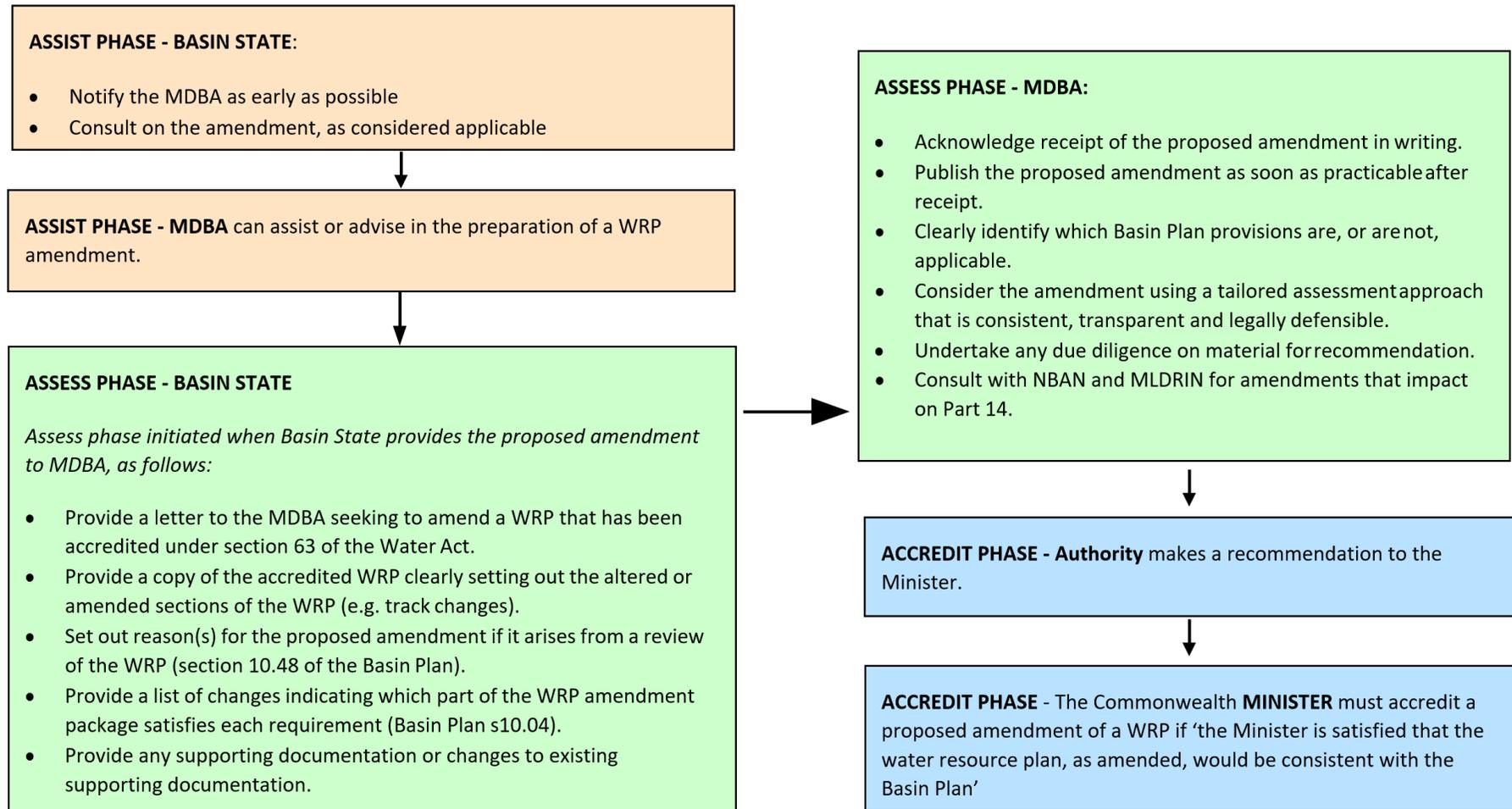
Water Act process	MDBA process
The Authority must consider the proposed amendment and prepare recommendations for the Minister on whether the proposed amendment should be accredited.	<ul style="list-style-type: none"> • The MDBA may assist or advise in the preparation of a WRP amendment • Acknowledge receipt of the proposed amendment in writing. • Publish the proposed amendment as soon as practicable after receipt. • Clearly identify which Basin Plan provisions are, or are not, applicable. • Consider the amendment using a tailored assessment approach that is consistent, transparent and legally defensible. • Undertake any due diligence on material for recommendation. • Consult with MLDRIN and NBAN for amendments that impact on Part 14. • May consult with Commonwealth agencies. • Prepare a recommendation for the Minister².

² The Authority will not recommend that the Minister not accredit the proposed amendment without first giving the Basin state a right of reply (s 65(4) of the Water Act)

Accreditation of amendment – Accreditation Phase

Having considered a proposed amendment, the Authority will prepare recommendations for the Minister on whether the proposed amendment should be accredited or not accredited in accordance with section 65 of the Water Act. However, the Authority will not recommend that the proposed amendment not be accredited without first giving the Basin state a right of reply (see section 65(4) of the Water Act). Once the recommendation has been finalised, the Authority is obliged to give its recommendations, and the proposed amendment, to the Minister for consideration. The Minister must accredit or not accredit the amendment.

Attachment A - Process for preparing, submitting, assessing and accrediting a water resource plan amendment



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